

In re) Fair Hearing No. 9609
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

1. The petitioner is a 47-year-old man with an eighth grade education and a long and continuous work history as a cab driver, maintenance man and factory worker. He has been married for 27 years and has raised and supported 9 children.

3. The petitioner had suffered from loose bowel movements for 10 years at the time he quit his job but until that time he was always able to handle the situation by frequent stops for bathroom use. He had intervals of from 1 - 2 hours between bowel attacks. However, the frequency of those attacks increased to 3-4 per hour until the petitioner was spending most of his day in the bathroom. By late 1989 he was experiencing 20 - 30 loose bowel movements per day (3 - 5

per hour) on average accompanied by abdominal cramping. Trips to the bathroom can last up to 30 minutes each. The frequency at this point is such that the petitioner can rarely leave his home. He goes into town on the average of once per week and must drive although he lives within walking distance. He no longer visits his children's homes although 7 of them live nearby. When he is not in the bathroom, he does light housework and prepares meals while his wife is at work. He is generally home alone during the day and wants to go out but cannot due to diarrhea. He has totally given up his former social activities and hobbies, including hunting and fishing due to his problems. In addition, he has chronic nasal congestion and must sleep sitting up at night. His sleep is frequently interrupted and lasts an average of 3 - 4 hours at a stretch. Sometimes pain from the cramping makes him so tired that he sleeps all day.

4. In 1987, some months before he quit his job, the petitioner underwent a barium enema test which came up negative. Because of this, his then treating physician diagnosed him as suffering from "irritable colon" a problem he felt was not disabling. He was also diagnosed by that physician as suffering from a moderate hearing loss and hypertension, neither of which conditions he felt was disabling.

5. In July of 1988, apparently based on a prior application, the petitioner was examined by a physician

consulting for DDS who found that the petitioner had chronic nasal congestion, mild COPD, a pinched nerve in his left neck with some mild residual weakness and stiffness, a mild hearing loss and well controlled hypertension. Although the examiner noted that the petitioner complained of 15 loose bowel movements per day, he made no attempt to test or diagnose his gastro-intestinal condition.

6. In mid-1989, the petitioner started seeing a different physician who encouraged him to reapply for Medicaid and wrote a letter to DDS stating that the petitioner was now experiencing 20 - 30 loose and watery bowel movements per day accompanied by cramping and that, although he was aware the 1987 barium enema had been negative, much time had passed since then and the petitioner needed new and complete tests to diagnose the problem for purposes of treatment. He stated "I believe that there is an organic cause for this problem and I do not expect it to be easily treated. For that problem I felt he should be supported in his efforts to obtain disability." He stated that the petitioner needed a full "GI" work-up by a gastroenterologist in order to confirm what he termed a "severe problem". He added that his efforts to treat him had been to no avail.

7. Instead of arranging a gastroenterology exam, DDS arranged for a psychological exam. What that exam showed was that the petitioner had been a hard working and ambitious person of average intelligence who now was

experiencing some mild anxiety. He had some mild problems with concentration and short term memory. He was described as presenting a "confusing picture" and there was some indication that he might be developing symptoms due to stress (psychosomatism) which could lead to invalidism. The psychologist concluded that "although the possibility of a psychological component to [petitioner's] colitis cannot be ruled out, one also wonders to what extent the indications of somatization seen on the MMPI may represent the effect of suffering for a prolonged period with a debilitating disease."

8. In October of 1989, the patient's treating physician filled out an RFC form in which he gave the opinion that the patient was suffering diarrhea of uncertain etiology which occurred 30 times per day and which could not be controlled in spite of several medications. It was his opinion that the petitioner would be unable to work until the diarrhea was controlled. He concluded by saying "I do not believe that it is logical or medically sound to send him for psychological evaluation and not for GI work up by a GI specialist. Probably unethical--Dumb for sure."

9. DDS's reviewers concluded that the petitioner's diarrhea was not severe based on the 1987 tests. He was never scheduled for GI tests.

10. Based on the above medical evidence it is found that the petitioner suffers from diarrhea which is of such a frequency and nature that, at least since May of 1988, he

has been prevented on a continuing basis from performing any activities for a period of more than 15 - 20 minutes at a time due to pain, cramping and a need to relieve himself. The patient's condition has not responded to medication and probably will not be treatable unless and until that exact cause of the problem is diagnosed through gastroenterological tests.

ORDER

The decision of the department is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The petitioner has put forth ample evidence that he has a medical impairment (although the diagnosis is not precise, the symptoms clearly indicate its existence) that equals the severity and duration requirements in the listings for digestive system disorders at 20 C.F.R. § 404, Subpart P, Appendix 1, Part A, Rule 5.00 et. seq. As such, he has shown that he is unable to engage in substantial gainful

activity and is disabled. 20 C.F.R. § 416.926(a).

DDS's development of the medical evidence in this case was patently irresponsible and unfair. Requests from the petitioner's physician that diagnostic tests be undertaken due to the severity of his symptoms were inexplicably ignored. A decision was made based on old medical tests which DDS had been specifically advised were not probative of his current medical condition. The department is reminded that it has an obligation to assist applicants in developing the medical evidence necessary to maintaining their Medicaid claims. No applicant should be denied because he or she is unable to pay for tests needed to confirm or pinpoint a diagnosis. The board has never and will never support a department decision which is based on its own clear failure to develop needed evidence.

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